

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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December 10, 2004

T.R.A. DOCKET ROOM¹

IN RE: Complaint of XO Tennessee, Inc.)
Against BellSouth and Request for Expedited) Docket No. 04-00306
Ruling and for Interim Relief)
)

XO'S RESPONSE TO BELL SOUTH'S "REQUEST TO DEFER"

The above-captioned matter is listed on the agenda of the Tennessee Regulatory Authority ("TRA") for December 13, 2004. The agenda states that the TRA will "consider complaint." On December 9, 2004, BellSouth Telecommunications, Inc. ("BellSouth") filed a "Request to Defer" this item to a subsequent TRA conference. For the reasons explained below, XO Tennessee, Inc. ("XO") opposes this request.

XO filed this complaint, which includes a request for an expedited hearing and interim relief, on September 21, 2004. In the complaint, XO informed the TRA that, contrary to express rulings from the FCC, BellSouth has refused to convert XO's "special access" circuits to less expensive "unbundled loops" unless XO agreed to pay unreasonable and inflated fees and to sign an agreement waiving XO's right to dispute those fees at the TRA. XO recognized, of course, that both sides should have the opportunity to present evidence to the TRA regarding the "just and reasonableness" of BellSouth's charges but asked, in the meantime, that the TRA order BellSouth to complete the requested conversions at an interim rate, subject to a retroactive true-up, of \$52.73 for the first conversion and \$24.62 for each additional conversion.¹

¹ This is the current rate charged by BellSouth for converting XO's switched access circuits to Enhanced Extended Loops ("EELs") in Tennessee. This rate is found in the parties' current interconnection agreement. XO believes it to be a reasonable interim rate because the conversions at issue here are the exact same billing-only conversions covered by that rate in Tennessee. XO also notes that the "switch as is" rate is much lower in other states; the Florida rate, for example, is \$8.98.

BellSouth has filed an answer to the complaint, addressing both XO's substantive arguments and the requests for an expedited hearing and interim relief. But now that the agency appears ready to take action, BellSouth seeks more delay. The company's "Request to Defer" appears to be based on the assumption that the TRA intends to address the merits of XO's substantive arguments. Since, at this time, the only evidence in the record consists of XO's complaint, BellSouth's answer, and XO's response to a staff data request, XO does not assume that the TRA intends to rule on the merits of the complaint at this time. To the contrary, XO assumes that the agency is going to consider only XO's limited request for interim relief, a request which the parties have addressed in their pleadings and is now ripe for decision. XO encourages the Authority to proceed and to deny BellSouth's "Request to Defer."

For the reasons set forth in the complaint, the TRA should grant XO's request for interim relief pending a final decision in this matter. Ordering BellSouth to make the conversions requested by XO at an interim rate does not prejudice BellSouth. Even if the incumbent later persuades the TRA that BellSouth's high charges are "reasonable" and cost-based, as required by the FCC or, as BellSouth also argues, beyond the TRA's jurisdiction to review, BellSouth will be fully compensated, by means of the true-up of the conversion rate, for performing those conversions. On the other hand, XO is clearly prejudiced by further delay. Without interim relief, XO is forced to pay exorbitant rates to convert circuits with no hope of reimbursement of those rates (in order to obtain conversions, even at those exorbitant rates, BellSouth requires XO to waive any further right to challenge such rates) even if the TRA eventually holds that BellSouth's rates are too high.

In support of the "Request to Defer," BellSouth largely repeats arguments that BellSouth has already made in answering XO's complaint. BellSouth also contends that this matter should be delayed because the FCC is scheduled to announce this week new unbundling rules to replace

those which have been overturned on appeal. But as BellSouth is well aware, there is no dispute regarding BellSouth's obligation to convert switched access circuits to UNE loops at just and reasonable rates and no pending challenge to the FCC's earlier decision on that point. In suggesting that the FCC's new rules may somehow affect XO's limited request for interim relief, BellSouth is simply clouding the issue before the Authority.

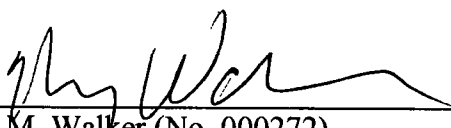
If the Authority is ready to rule on XO's request for interim relief, an issue which both sides have addressed in XO's complaint and BellSouth's answer, there is no legitimate reason to put this matter off for another month. XO has asked the TRA for an "expedited ruling and interim relief" because, as explained in the complaint, each day that BellSouth refuses to comply with XO's conversion requests – in defiance of the FCC's rules – harms XO. One way or the other, XO is entitled to a ruling without further delay.

For these reasons, BellSouth's "Request to Defer" should be denied.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

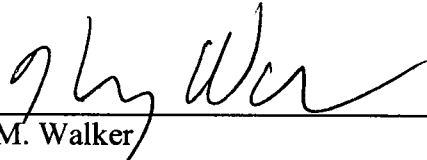

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. Mail, postage prepaid, to:

Guy Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street, Ste. 2101
Nashville, TN 37201-3300

on this the 10th day of December 2004.



Henry M. Walker